

AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN ASSEMBLY JUNE 30, 2009

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 43

Introduced by Senator Alquist

(Principal coauthor: Assembly Member Torrico)

(Coauthors: Assembly Members Beall and Coto)

January 6, 2009

An act to add Section 6532 to the Government Code, relating to joint powers agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 43, as amended, Alquist. Joint powers agencies: City of Santa Clara.

Under existing law, 2 or more public agencies may enter into an agreement to jointly exercise any power common to the contracting parties, as specified.

This bill would authorize a joint powers agency, that includes the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara formed to construct, operate, or maintain a stadium for use by a professional football team, to let a design-build contract without utilizing the competitive bid process for the stadium construction project, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6532 is added to the Government Code,
2 to read:

3 6532. (a) The Legislature finds and declares that it is in the
4 best interest of the communities located within the City of Santa
5 Clara that a joint powers agency that includes the City of Santa
6 Clara and the Redevelopment Agency of the City of Santa Clara
7 formed to construct, operate, or maintain a stadium for use by a
8 professional football team be authorized to let a sole source contract
9 for the stadium construction project to a qualified design-build
10 contractor. This authorization may enable that joint powers agency
11 to prevent cost overruns, improve efficiency, and benefit from
12 specialized expertise.

13 (b) Notwithstanding any other provision of law, and subject to
14 subdivision (c), a joint powers agency including the City of Santa
15 Clara and the Redevelopment Agency of the City of Santa Clara
16 formed to construct, operate, or maintain a stadium for use by a
17 professional football team may award a design-build contract
18 related to that stadium to a qualified design-build contractor
19 without utilizing an otherwise applicable competitive bid process,
20 provided that the governing body of the joint powers agency
21 determines that the cost of the contract is reasonable and that award
22 of the contract without utilizing the competitive bid process is in
23 the best interest of the joint powers agency.

24 (c) A joint powers agency that includes the City of Santa Clara
25 and the Redevelopment Agency of the City of Santa Clara shall
26 not award a design-build contract pursuant to subdivision (b) unless
27 all of the following conditions are met:

28 (1) The design-build contract does not require expenditure of
29 money from the general fund of the City of Santa Clara.

30 (2) The obligation of the Redevelopment Agency of the City of
31 Santa Clara to contribute funding toward amounts due under the
32 design-build contract is limited to a specified maximum amount,
33 provided that the specified maximum amount need not apply to
34 debt service and other financing costs.

35 (3) A private party will be responsible for any construction cost
36 overruns.

37 (d) A joint powers agency awarding a design-build contract
38 pursuant to this section shall require that subcontract work be

1 awarded through a competitive process established by the joint
2 powers agency.

3 (e) Notwithstanding Section 3248 of the Civil Code, for
4 design-build contracts awarded pursuant to this section, the joint
5 powers agency may specify that the payment bond shall be in a
6 sum not less than one-half of the contract price or three hundred
7 million dollars (\$300,000,000), whichever is less.

8 (f) *Each joint powers agency that elects to proceed under this*
9 *section and uses the design-build method to construct, operate, or*
10 *maintain a stadium for use by a professional football team shall*
11 *submit to the Legislative Analyst's Office, before December 1,*
12 *2014, a report containing a description of each project procured*
13 *through the design-build process after January 1, 2010, and before*
14 *November 1, 2014. The report shall include, but shall not be limited*
15 *to, all of the following information:*

- 16 (1) *The type of project.*
- 17 (2) *The gross square footage of the project.*
- 18 (3) *The design-build entity that was awarded the project.*
- 19 (4) *Where appropriate, the estimated and actual length of time*
20 *to complete the project.*
- 21 (5) *The estimated and actual project costs.*
- 22 (6) *A description of any written protests concerning any aspect*
23 *of the solicitation, bid, proposal, or award of the design-build*
24 *project, including the resolution of the protests.*
- 25 (7) *An assessment of the prequalification process and criteria.*
- 26 (8) *An assessment of the effect of retaining 5-percent retention*
27 *on the project.*
- 28 (9) *A description of the labor force compliance program, as*
29 *defined in Section 20133 of the Public Contract Code, and an*
30 *assessment of the project impact, where required.*
- 31 (10) *A description of the method used to award the contract. If*
32 *best value, as defined in Section 20133 of the Public Contract*
33 *Code, was the method, the report shall describe the factors used*
34 *to evaluate the bid, including the weighting of each factor and an*
35 *assessment of the effectiveness of the methodology.*
- 36 (11) *An assessment of the project impact of skilled labor force*
37 *availability, as defined in Section 20133 of the Public Contract*
38 *Code.*
- 39 (12) *An assessment of the design-build dollar limits on the joint*
40 *powers agency's projects. This assessment shall include projects*

1 *where the agency wanted to use the design-build method but was*
2 *precluded by the dollar limitation. This assessment shall also*
3 *include projects where the best value method was not used due to*
4 *dollar limitations.*

5 *(13) An assessment of the most appropriate uses for the*
6 *design-build method.*

7 SEC. 2. The Legislature finds and declares that Section 1 of
8 this act, ~~which~~ *that* adds Section 6532 to the Government Code,
9 is a special law which is necessary because a general law cannot
10 be made applicable within the meaning of Section 16 of Article
11 IV of the California Constitution because of the unique
12 circumstances of the City of Santa Clara. In that respect, the City
13 of Santa Clara needs to address the unemployment rate in and
14 around the City of Santa Clara and the San Francisco Bay ~~Area~~
15 *area.*